

Judge Baker, cont.

In 2011 he joined the Board of Trustees of Garrett-Evangelical Theological Seminary in Evanston, IL, where he serves on the board's Academic Affairs committee.

Judge Baker was retained by election in 1992, 2002 and 2012. He and his wife have five children and – so far – nine grandchildren.

Judge Bradford, cont.

Judges Criminal Policy Committee and the Board of Directors of the Indiana State Judicial Conference.

He is a Senior Distinguished Fellow of the Indianapolis Bar Association and has taught ICLEF seminars on trial practice for more than 10 years. From 2005 to 2007, Judge Bradford hosted “Off the Bench with Judge Cale Bradford,” a legal commentary program on Marion County's government access network. He also served on the Judicial Technology and Automation Committee (JTAC), helping to draft the state judiciary's policies on technology and electronic case management. Judge Bradford currently serves as an adjunct instructor in forensic science and the law at Indiana University Purdue University Indianapolis.

Judge Bradford is a former director of Indianapolis's John P. Craine House, a residential alternative to incarceration for women offenders with pre-school-aged children. Judge Bradford regularly attends St. Luke's United Methodist Church. He and his wife, a full-day kindergarten teacher, have five children.

Judicial garb rooted in tradition and symbolism

Presidents and governors wear business attire in their official capacities, as do members of Congress and state legislatures. But judges don robes, mainly black, which is a centuries-old tradition with obscure roots.

There are variations.

Judges on the Maryland Court of Appeals (that state's highest court) wear red robes. Former United States Chief Justice William Rehnquist added gold stripes to his sleeves – on his own volition.

“I always heard that the reason we wear robes, and in England wigs as well, is because we represent uniform justice and not our own individual pro-

Attorneys for the Parties

For the Appellant

Mark S. Lenyo is a native of Terre Haute. He graduated from the University of Notre Dame in 1981 with a degree in Finance. Mr. Lenyo earned his law degree from Valparaiso University School of Law in 1984. While in law school, he was a member of the Valparaiso Law Review.

Mr. Lenyo has been in private practice in South Bend since 1984, with a focus on family law and criminal defense in both federal and state courts. He has been a deputy public defender for St. Joseph County since 1997, where he is assigned to the major crimes division.

Mr. Lenyo has tried over 100 jury trials in his career and has appeared in over 120 appeals in state and federal court. He has argued cases before the Seventh Circuit Court of Appeals in Chicago, IL 15 times.

Mr. Lenyo resides in South Bend with his wife and 5 children (including 16-year triplets). He enjoys following Notre Dame football, when not transporting his children to their activities.

For the Appellee

Tyler G. Banks is the newest addition to the Attorney General's Criminal Appeals Section, being hired in the first week of March 2015. He graduated from Purdue University with a B.S. in economics in 2009 and earned his J.D. in 2012 from Emory University School of Law in Atlanta, GA.

While at Emory he served as Executive Managing Editor for the *Emory International Law Review*, published a comment on international law and corporate liability, and received the Red Pen Award for Excellence in Editing.

Before joining the Attorney General's office, Mr. Banks was a deputy prosecuting attorney in Jackson County, IN, for more than two years, managing a caseload in excess of 1,200 filed cases per year.

He is originally from Brownstown, IN, and now lives in Indianapolis.

clivities,” Judge Margret G. Robb said.

Her observation applies to some nonjudicial bodies, too. Symphony musicians dress alike, as do soldiers and graduates. In those ensembles, the individual is less important than the group, although standouts are recognized in other ways.

According to a 2011 article in *The Justice System Journal*, some scholars regard robes as “legitimizing symbols” that reinforce preexisting positive opinions about the courts. Other examples include the general solemnity of judicial proceedings and the importance placed on legal precedent.

The relative uniformity of judges' garb is based almost entirely on tradition, not

laws or court rules.

All of Indiana's current Supreme Court and Court of Appeals judges wear unadorned black robes, although some of the women sometimes wear collared blouses.

Senior Judge Betty Barteau says she always wore a white judicial collar when she was a full time member of the court, as attested by photos from the time. But as a trial court judge she occasionally wore navy or dark green robes.

For the record, robes are reserved for court and ceremonial events. Around the office, judges dress like the rest of us.

SYNOPSIS

On July 23, 2014, Donald Courtway noticed a bucket of water underneath the spigot on the side of his house.

Courtway knew that his neighbor, Winifred Hale, did not have running water and had been borrowing water from neighbors.

He picked up the bucket, dumped out the water, and walked on to Hale's driveway where he confronted Leonard Blackmon. After a brief exchange during which Courtway threw a bucket and said he was going to call the police, Blackmon drew a knife and held it above his head. Courtway placed his hand on his pocket and said, “I hope you enjoy your last day on earth,” in an effort to make it appear as though he was armed.

Blackmon then put the knife down, offered a few parting expletives, and returned to the garage. Courtway went back to his house and called the police.

Police arrested Blackmon later that evening and charged him with level 5 felony intimidation. To convict a person of level 5 felony intimidation, the State is required to prove beyond a reasonable doubt that the person: (1) communicated a threat to another person; (2) with the intent that the other person be placed in fear of retaliation for a prior lawful act; (3) while having a deadly weapon.

The charge stated that Blackmon threatened to cut Courtway with a knife to place him in fear of retaliation for the prior lawful act of catching Blackmon stealing water. A jury found Blackmon guilty as charged. Blackmon was sentenced to four years imprisonment.

On appeal, Blackmon argues that the State did not present sufficient evidence to prove (1) that he communicated a threat to Courtway and (2) that he intended to place Courtway in fear of retaliation for the prior lawful act of catching Blackmon stealing water.

As to whether Blackmon threatened Courtway, the intimidation statute defines “threat” as “an expression, by words or action, of an intention to . . . unlawfully injure the person threatened or another person[.]”

Blackmon contends his actions were

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Court of Appeals of Indiana

Hearing oral argument at

Lake County Public Library, Merrillville

Thursday, April 16, 2015 @ 1 p.m.



Blackmon v. State

71A03-1411-CR-413

On Appeal from St. Joseph Superior Court

The Honorable Jane Woodward Miller, Judge

Synopsis, cont.

merely intended to communicate to Courtway that he was prepared to defend himself. Blackmon points out that it was Courtway who began the confrontation by throwing the bucket toward the house and then escalated it by elevating his voice. Blackmon points to the fact that Courtway himself testified at trial that he believed Blackmon was going to defend himself. Blackmon also points out that he did not say anything while holding the knife.

The State maintains that the fact that Blackmon said nothing is irrelevant because actions alone can constitute threats. The State believes that the fact that Blackmon did not thrust the knife at Courtway or approach him with the knife is irrelevant as well. These facts only make Blackmon’s conduct less threatening. In sum, the State argues that Blackmon’s act of brandishing the knife, in and of itself, was sufficient to constitute a threat.

In regard to putting Courtway in fear of retaliation for catching Blackmon stealing water, Blackmon argues that (1) Courtway did not catch Blackmon stealing water; and (2) even if he did, Blackmon did not act to place Courtway in fear of retaliation for *that* prior lawful act. Blackmon argues that, if anything, the record shows that he was retaliating because Courtway said he would call the police.

First, the State acknowledges that the charge alleged that Courtway’s prior lawful act was *catching* Blackmon stealing water but that it argued to the jury that his prior lawful act was *confronting* Blackmon about the stolen water. The State sees no problem with this change and argues that both concepts describe essentially the same conduct.

Finally, the State argues that even if Blackmon was reacting to Courtway’s statement about calling the police, this statement was part and parcel of the “confrontation,” which was the true prior lawful act that the State identified. The State elaborates that Blackmon was retaliating against the prior lawful act of the confrontation, even if his specific retaliation was geared towards a discrete statement within the confrontation.

Every docket tells a story:
Court decisions as glimpses into Indiana history

Indiana Appellate Court Reports, Vols. 1, 2, and 3, include the complete written opinions of several hundred cases decided by the Court of Appeals in its first two terms. Naturally, the legal issues before the court were many and varied. But the underlying facts, taken together, paint a vivid picture of Indiana’s economy and society circa 1891 – the same year that James Naismith invented basketball.

Agriculture was an economic mainstay, and even city residents maintained livestock. In *The Noblesville Gas and Improvement Company v. Teter*, the court affirmed damages of \$60 against the gas company for the death of Teter’s cow after it fell into an open gas line trench.

The opinion notes that by county and city ordinance, “cows were permitted to run at large within the city (of Noblesville) within the day time.”

Railroads were frequent litigants. *Vols. 1, 2, and 3* record 34 railroad-related appeals, many involving damages to livestock, but also other issues.

In a disputed-fare case from Greene County, the court ruled for the railroad but admonished the company “if unnecessary force was used in expelling the appellee from the train.”

Vol. 1 also includes two cases involving **The Western Union Telegraph Co.** One of them, *Western Union v. Trumbull*, cited an 1885 law that anticipates current legal and policy arguments about **Internet neutrality**.

The relevant passage of the law said that telegraph companies “shall in no manner discriminate in rates charged, or words or figures charged for, or manner or conditions of service between any of its patrons, but shall serve individuals, corporations and other telegraphic companies with impartiality.”

Then as now, fraught **domestic rela-**

tions occupied a significant share of the docket.

In *Story v. Story*, the court affirmed judgment against a father who’d been sued by his daughter for nonpayment of \$3 a week for house and farm work.

Marshall et al v. Bell involved a father’s promissory note for support and maintenance of a “bastard child.”

And in *Adams v. Main*, the court affirmed a trial court’s judgment that the appellant had alienated the affections of the appellee’s wife, even without proof of adultery. Such proof was not required, per the Appeals Court.

Contract disputes comprised a large part of the docket, too, and some of them include telling details about prevailing wages and prices.

In *Greene v. McIntire et al*, the court affirmed judgment against New York City grain merchants who had contracted to buy 20,000 bushels of “grade No. 2 red wheat” from a Knox County farmer. Price: \$14,891, or 74 cents per bushel. (In December 2013, March 2014 wheat deliveries were trading at \$6.39/ bushel at the Chicago Board of Trade.)

Orme v. Cooper, a Floyd County case, reported the value of 571 pounds of harness leather as \$114.20, or 20 cents per pound.

Mr. Trumbull, the appellant in the *Western Union* case cited above, paid 25 cents for his telegram.

Another case put the value of a Warren County house, lot, furnishings, and various materials and repairs at \$531.85.

Vols. 1, 2, and 3 include just **18 criminal appeals** (all others assigned to the Supreme Court), many involving crimes of vice such as gambling, liquor violations and prostitution (referred to in one case as “a certain house of ill fame” in Valparaiso).

The court affirmed the trial court’s decision 13 times, or 72 percent.

Today’s Panel of Judges



The Honorable
Melissa S. May

Vanderburgh
County

Born in Elkhart, **Melissa S. May** studied criminal justice at Indiana University-South Bend before earning her law degree from Indiana University School of Law-Indianapolis in 1984. She then launched a 14-year career in private legal practice in Evansville that focused on insurance defense and personal injury litigation.

Judge May moved directly from private practice to the Court of Appeals in 1998 and was retained by election in 2000 and 2010. Prior to this year, she served as Presiding Judge of the Fourth District, which covers all of Indiana.

Judge May has long been active in local, state and national bar associations and foundations, with a particular focus on continuing legal education and appellate practice. At various times, Judge May has chaired the Indiana State Bar Association’s Litigation and Appellate Practice sections and was secretary to the Board of Governors.

As chair of the Indiana Pro Bono Commission, Judge May worked with 14 pro bono districts to train lawyers and mediators on how to assist homeowners facing foreclosure. She also serves on an Indiana Judicial Conference Committee that translated all civil jury instructions into “plain English.”

Judge May teaches trial advocacy at Indiana University McKinney School of Law and frequently speaks on legal topics to attorneys, other Judges, schools, and other professional and community organizations. She is special counsel to the American Bar Association’s Standing Committee on Attorney Specialization, on which she’s served since 2003.

In October 2011, Judge May received the Women in the Law Recognition Award from the Indiana State Bar Association for her dedication to helping women advance in the legal community.

She and her husband live in Morgan County.



The Honorable
John G. Baker

Monroe County

John G. Baker was named to the Court of Appeals in 1989, which makes him the longest-serving member on the current Court. He has served as Presiding Judge of the Court’s First District, which covers all of southern Indiana, and as Chief Judge of the Court from 2007-2010.

Judge Baker grew up along the Ohio River in Aurora, IN, but attended high school at Culver Military Academy in northern Indiana. He studied history at Indiana University-Bloomington, and later received his law degree from Indiana University School of Law-Bloomington.

He practiced law in Monroe County for many years before joining the Monroe County bench as first a county and later a Superior Court Judge. Diligently, he handled more than 15,000 cases in 13 ½ years on Monroe County benches, and has written more than 4,000 majority opinions for the Court of Appeals.

Judge Baker is greatly interested in the history, structure and organization of Indiana’s judicial branch of government. He regards Indiana judges not as remote figures who conduct abstract arguments, but as people fully engaged in the life of the law and their communities.

He has taught in college and law school and is active in local, state and national bar associations. In 2013, Judge Baker retired after 33 years of teaching at the School of Public and Environmental Affairs, Indiana University-Bloomington. He continues to teach during the Spring semester at the McKinney School of Law.

Judge Baker’s many community activities include his church, the YMCA and the Boy Scouts (where he attained Eagle Scout status as a youth).

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The Honorable
Cale J. Bradford

Marion County

Cale J. Bradford was appointed to the Court of Appeals by Governor Mitch Daniels and took his seat on August 1, 2007.

Prior to his elevation to the Court of Appeals, Judge Bradford served for more than 10 years as Judge of the Marion Superior Court, seven years in the criminal division and three in the civil division. He was twice elected presiding judge by his colleagues.

During this tenure, Judge Bradford chaired the Marion County Criminal Justice Planning Council, a group of local elected and appointed officials who recommended ways to improve the county’s response to criminal justice problems, including jail overcrowding, staffing, and budget issues. His efforts led to the end of 30 years of federal oversight of the Marion County Jail and to security improvements at the county’s Juvenile Detention Center.

Before joining the bench, Judge Bradford served in the Marion County Prosecutor’s Office for two years, overseeing a staff of more than 100 attorneys. For five years, he was an Assistant United States Attorney for the Southern District of Indiana, prosecuting major felony drug trafficking cases. He engaged in the private practice of law from 1986 to 1991, and served as both a deputy prosecutor and public defender during his career.

A native of Indianapolis, Judge Bradford received a B.A. in labor relations and personnel management from Indiana University-Bloomington in 1982 and his J.D. from Indiana University-Indianapolis in 1986. He is the Court of Appeals’ liaison to the Indiana Judges Criminal Instructions Committee, which provides guidance to judges on jury instructions in criminal cases, and a former member of both the Indiana

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